

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| The Peoples Gas Light and Coke Company |) | |
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| Petition Pursuant to Rider QIP of Schedule |) | ICC Docket No. 15-0209 |
| Of Rates for Gas Service to Initiate a |) | |
| Proceeding to Determine the Accuracy and |) | |
| Prudence of Qualifying Infrastructure Investment |) | |

**RESPONSE OF THE PEOPLE OF THE STATE OF ILLINOIS
TO THE ICC STAFF’S MOTION TO COMPEL**

Pursuant to the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”), 83 Ill. Admin. Code §§ 200.190 and 200.370, the People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“AG” or “the People”), hereby file their Response to the Motion to Compel (the “Motion”) filed by the ICC Staff (“Staff”) on April 1, 2016 in the above-captioned proceeding. In response to the Motion to Compel, the People state as follows:

1. This proceeding was initiated to reconcile amounts billed under The Peoples Gas Light and Coke Company’s (“PGL” or “Peoples Gas” or the “Company”) Qualifying Infrastructure Plant (“QIP”) surcharge in 2014, pursuant to Section 9-220.3 of the Public Utilities Act, with “the actual prudently incurred costs recoverable under” PGL’s Rider QIP tariff.¹ 220 ILCS 5/9-220.3(e)(2); 83 Ill. Admin. Code § 556.100(a)(1).

2. As Staff states at paragraphs 3-4 of its Motion, Staff sent the following data request captioned DAS 3.01 to PGL on January 21, 2016.

¹ PGL’s Rider QIP tariff was approved in ICC Docket No. 13-0534 on January 7, 2014.

In Docket No. 14-0496, Peoples Gas made a compliance filing² on November 30, 2015 to merger condition no. 5. The compliance filing discusses a cost plan model³. The Executive Summary in the compliance filing states the following. “Our new target case incorporates assumptions about strict cost controls and greater efficiency – initiatives that will result from improved management and execution of the program. It is our belief that more effective management and execution will deliver an immediate 15% cost improvement during the next three years, with an improvement of approximately 28% in the long-run cost of the program.” Regarding this statement and the cost plan model discussed in the compliance filing to merger condition no. 5, please provide the following information:

- a. Please provide the cost model in Excel.
- b. Please provide a complete list of all assumptions made in the cost analysis.
- c. Please provide a complete list of all initiatives made in the cost analysis.
- d. For each initiative, please indicate why such measures were not taken in 2014.
- e. Provide the basis of the “immediate 15% cost improvement.”
- f. Provide the basis of the “improvement of approximately 28% in the long-run cost of the program.”

3. As Staff notes at paragraphs 5-6 of its Motion, PGL responded as follows on February 5, 2016 to Staff’s data request DAS 3.01:

Peoples Gas objects to this request as seeking information outside the scope of and not relevant to this proceeding, which is the reconciliation applicable to 2014 Rider QIP cost recovery, and not reasonably calculated to lead to the discovery of relevant and admissible evidence.

4. Later the same day on February 5, 2016, the People submitted a new data request to PGL, identical in content to Staff data request DAS 3.01, captioned as AG 4.01.

² That compliance filing may be found at these e-Docket webpages:
<https://www.icc.illinois.gov/docket/files.aspx?no=14-0496&docId=237003>;
<https://www.icc.illinois.gov/docket/files.aspx?no=14-0496&docId=237007>.

³ “The “cost plan model” is for PGL’s Accelerated Main Replacement Program (“AMRP”) first ordered in Docket Nos. 09-0166/0167 (cons.). PGL’s position in this proceeding is generally that 2014 AMRP capital costs are recoverable under Rider QIP.

5. On February 8, 2016, PGL replied to the People's data request AG 4.01, with a response identical to its February 5, 2016 response to Staff data request DAS 3.01.

6. On February 29, 2016, the People sent a letter by e-mail to PGL counsel, pursuant to Section 200.350⁴ of the Commission's Rules, explaining the People's concerns with PGL's objection to data request AG 4.01.

7. PGL counsel replied by e-mail on March 4, 2016 to the People's February 29, 2016 letter. PGL began that communication by emphasizing that the gas main replacement efficiency opportunities identified in PGL's November 30, 2015 filing in Docket No. 14-0496 were based on a study commissioned by "new management."⁵ PGL's letter then stated:

This proceeding is the calendar year 2014 reconciliation of Peoples Gas' Rider QIP. The prudence aspect of this proceeding is based on "that standard of care which a reasonable person would be expected to exercise under the circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time the judgment was exercised can be considered. Hindsight review is impermissible. Imprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being 'imprudent'."⁶

The requested information pertains to matters not existing at the time management made the decisions pertinent to calendar year 2014. The statements in the data request are from management that was not in place at Peoples Gas until more than halfway through 2015.

⁴ 83 Ill. Admin. Code § 200.350.

⁵ PGL's ultimate corporate parent was acquired on June 29, 2015 by Wisconsin Energy Corporation (now known as WEC Energy Group, Inc.).

⁶ The PGL letter did not indicate the source of this quotation, but the first three sentences of the quotation appear to be from *Illinois Power Co. v. Illinois Commerce Comm'n*, 338 Ill.App.3d 425, 428 (5th Dist. 2003). The fourth sentence appears to be from *Illinois Power Co. v. Illinois Commerce Comm'n*, Ill.App. nos. 3-06-0879/3-07-0569 (cons.) (3rd Dist. 2008). The fifth sentence appears to be from later in the Fifth District's *Illinois Power Co.* opinion, 338 Ill.App.3d at 435.

8. PGL's March 4, 2016 letter to the AG closed by reiterating its objection to data request AG 4.01.

9. The legal standard for prudence advanced by PGL – “that standard of care which a reasonable person would be expected to exercise under the circumstances encountered by utility management at the time decisions had to be made” – is crucial in understanding why PGL should be compelled to respond to Staff data request DAS 3.01 (which is identical to AG 4.01). While it is true that “new management” took over PGL in the middle of 2015, PGL has not proven that the efficiency opportunities that the new management became aware of in late 2015 were impossible for the old management to learn of during or prior to 2014 – in other words, that they were “not existing,” as PGL put it in its March 4, 2016 letter. Whether these efficiency opportunities were readily ascertainable by old management, as part of its participation in the natural gas industry, during or prior to 2014 is an open factual question, one that discovery should be used to test.

10. It is important that the Commission inquire whether each of the gas main replacement efficiency opportunities identified by PGL in the November 30, 2015 filing in Docket No. 14-0496 were known to PGL, or reasonably should have been known to PGL, during or prior to 2014, the reconciliation year under review in this proceeding. If the opportunities *were* known or reasonably should have been known, the Commission should also probe as part of its prudence inquiry whether it was reasonably feasible to implement these efficiency opportunities during 2014. Staff data request DAS 3.01 is intended to begin to gather information related to these inquiries. As Staff states at paragraph 16 of its Motion, “[i]f the Company management during and or prior to 2014 either knew or should have known and should have had in place strict cost

controls and efficiency initiatives that are now included in the new cost model but did not, then Peoples Gas would have been imprudent [with respect to 2014 QIP investments].”

11. Peoples Gas’s position that “[t]he requested information pertains to matters not existing at the time management made the decisions pertinent to calendar year 2014” and that “[t]he statements in the data request are from management that was not in place at Peoples Gas until more than halfway through 2015” as bases for denying the requested information are arguments the Company is free to present in briefs in its interpretation of the prudence standard. These arguments, however, do not constitute a legitimate basis for refusal to provide the requested information. ICC rules governing discovery provide that “[i]t is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding.” 83 Ill. Admin. Code § 200.430. That rule requires that the Company provide to the requesting parties the information requested, which is directly relevant to the issue of whether PGL management could and should have implemented “strict cost controls and greater efficiency” – factors identified by Company management today as appropriate – in order to prudently manage 2014 Rider QIP investments.

12. The information sought by Staff data request DAS 3.01 is relevant to this proceeding under Section 556.100(a)(1)⁷ of the Commission’s Rules and thus admissible.

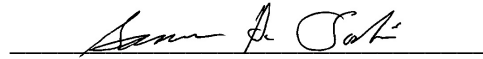
13. In conclusion, the People support Staff’s Motion to Compel a Response to Staff Data Request DAS 3.01 and urge that it be granted, for the reasons stated in Staff’s Motion as well as the reasons stated above.

⁷ 83 Ill. Admin. Code § 556.100(a)(1).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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